

Answered 02/28/89 : Non-Reportable

(JK)

February 27, 1989

Jeffrey Kaplan, Esquire
Premerger Notification Office
Federal Trade Commission
Bureau of Competition
6th & Pennsylvania Ave. N.W.
Washington, D.C. 20041

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Dear Mr. Kaplan:

The end of last week we discussed whether an acquisition I described would have to be reported under the Hart-Scott-Rodino Act. After discussing the matter, you requested that I describe the factual situation in writing in order that you could be sure you understand the transaction.

The situation involves two [REDACTED] companies which are of a size exceeding that required for reportability. One of the [REDACTED] companies has a wholly-owned U.S. subsidiary. The acquiring [REDACTED] company proposes to acquire all of the assets of the U.S. subsidiary for a sales price comprised of the Book Value of Purchased Assets as of the February 1, 1989 balance sheet, plus Canadian \$6,500,000 which would be approximately U.S. \$5,500,000. That payment would be designated as a premium. On February 1, 1989, the book value of the assets of the U.S. subsidiary was U.S. \$11,100,000.

The question I posed is whether the transaction described herein is exempt from the requirements of the Act under Rule 802.51(c), which provides:

"An acquisition by a foreign person shall be exempt from the requirements of the Act if:

(c) The acquisition is of less than \$15,000,000 of assets located in the United States (other than investment assets); or"

[REDACTED]

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The particular question which I posed to you was how to calculate whether the assets of the United States subsidiary in this situation are below \$15,000,000. The U.S. subsidiary would appear to have less than \$15,000,000 in assets, if one refers to Rule 801.11(c)(2) which reads:

"The total assets of a person shall be as stated on the last regularly prepared balance sheet of that person."

I trust that this is the type of written description of the transaction which you sought to enable you to evaluate this question.

I look forward to hearing from you as promptly as you are able to review this matter.

Very truly yours,

[REDACTED]

[REDACTED]

[REDACTED]